

UNITED STATES PATENT AND TRADEMARK OFFICE

**MAILED**

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAY 20 2003

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MASANOBU IWASAKI  
and  
YOSHIO HAYASHIDE

Application No. 09/934,474

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on April 22, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellants filed an amendment on July 18, 2002 (Paper No. 7). In an Advisory Action mailed on July 26, 2002, the examiner indicates in Block 2 that the amendment would not be entered and stated her reasons therein. However, in Block 7, the examiner indicates that the amendment would be entered. Therefore, it is not clear from the record whether or not the amendment filed on July 18, 2002 (Paper No. 7) should have been

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entered. If, in fact, the amendment should have been entered, then the examiner must take corrective action by having said amendment physically entered. On the other hand, if the amendment has not been entered, then not only must the examiner notify appellants in writing notifying them of non-entry of said amendment, but to notify appellants to submit a correct copy of the Appendix of Claims according to the latest amendment.

In addition, the examiner entered a Final rejection on April 18, 2002 (Paper No. 6). Appellants were given a shortened statutory period of three months to file a Notice of Appeal. Appellants filed their Notice of Appeal on September 4, 2002 (Paper No. 9) which is untimely under the provisions of 37 CFR 1.136(a). Therefore, it appears that the application is abandoned. Applicant needs to show why this application should not be abandoned.

Accordingly, it is

ORDERED that the application is returned to the examiner for resolution of the following issues:

(1) to clarify for the record whether or not appellants' amendment filed on July 18, 2002 (Paper No. 7) has been entered and, if so, to take corrective action of said amendment by having amendment physically entered; or

(2) if amendment has not been entered, to notify appellants of proper status of amendment and to have appellants submit a corrected copy of the Appendix of Claims to reflect the latest

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amendment;

- (3) to present reasons why this application should not abandoned; and  
(3) for such further action as may be appropriate.

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